IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5927 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULGAFAR ABDULSATTAR SHAIKHCHANDOLA TALAVANA CHHAPRA

Versus

COMMISSIONER OF POLICE

Appearance:

MR CHETAN B RAVAL for Petitioner

MR UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 24/08/2000

ORAL JUDGEMENT

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India, challenging the legality of order of detention dated 25.02.2000 passed by respondent no.1 on the ground that the petitioner is a bootlegger within the meaning of section 2(b) of the Gujarat Prevention of Anti-social Activities Act, 1985, (

In short `the Act') and further that activities of the petitioner are prejudicial to the maintenance of the public order.

2. As per case of the detaining authority six different types of prohibition cases were registered in one police station of which reference is their in the grounds supplied to the petitioner. As per that grounds, investigation of such six prohibition cases is going on. Over and above aforesaid six prohibition cases, the detaining authority also relies on statements of two witnesses of which identity has not been disclosed by claiming privilege under sec.9(2) of the Act. As per the papers produced by the petitioner, PI recorded statements of two witnesses on 24.2.2000. The detaining authority verified that statements on 25.2.2000 and on that very day he passed the order of detention which is challenged in this writ petition.

3. Learned advocate for the petitioner has argued that the detaining authority had no time to apply his mind before passing order of detention because 25.2.2000 he verified the statements of two witnesses and thereafter he passed the detention order on that very day. Mr.Raval, learned advocate for the petitioner has placed reliance on a decision of the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and ORs. reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec. 9(2) of the Act. Here in this case, he had no time to do such type of exercise to verify whether this persons are fictitious persons or whether the statements are bogus statements or not. In that cited case also the statements of such two witnesses were recorded on 16.12.1992 and the detention order was passed on 17.12.1992. In that case also there was no material to show as to why the detaining authority has exercised the power under sec.9(2) of the Act. Ultimately, this Court held that section 9(2) of the Act has affected the detenu's right of making effective representation under Article 22(5) of the Constitution and, therefore, in that case continued detention of the detenu was held to be bad and illegal and the impugned detention order was quashed and set aside. The facts of the present case squarely falls within the facts and circumstances of the cited case.

4. Here in this case, the respondents have not filed any written reply or affidavit. This Court has deprecated the method of not filing the written reply in

the case of Special Civil Application No.6322 of 1999 decided on 11th February, 2000.

5. In view of discussion made hereinabove, the order of detention which is challenged in this Special Civil Application is bad in law and is required to be quashed and set aside. Accordingly, the detention order dated 25.2.2000 passed by respondent No.1 in respect of petitioner is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any other criminal case. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

syed/